

Changing the rules, as the Democrats are proposing to do, really is their last chance to pass their leftwing, fringe ideas. It is the last chance to pack the Supreme Court. The Democrats in this body introduced legislation to pack the Supreme Court, to add four Democrats to the Court. It is the last chance to add new States to the Union. It is the last chance to give amnesty to millions of illegal immigrants. It is the last chance before Democrats lose control of the Congress.

So why do they want to change the rules? It is because their agenda is so unpopular with the American people. They understand, as one Democrat said to another, that we have got to do it now because it is our last chance to force socialism on the American people whether they want it or not.

Instead of changing the rules, the Democrats should change their agenda. The Democrats should focus on what the American people say is important to them. It is our constituents who determine what is important to them. They are to communicate it to us. We are to represent them.

What is important to them? Well, it is getting ahead of the coronavirus, it is securing the border, and it is really to stop adding fuel to the fire of inflation when paychecks can't keep up with the costs of gas and groceries.

A Wall Street Journal story yesterday was about all of the Democrats who signed a letter saying: money from New England, Members of this body—they said energy costs are so high, the government should do something about it. This is after Joe Biden kills the Keystone XL Pipeline and stops oil and gas exploration, and their own home States are blocking pipelines which could carry inexpensive energy to the people who live there. Yet the Democrats want the government to do more. The government has done enough damage already.

There are lots of ideas that could pass the Senate and the House and be signed into law that would actually help the American people. Those are the things the American people are asking for. The American people are not asking for a blatant Democrat power grab to force through a very liberal agenda. People don't want to be muzzled. They don't want to have their voices silenced. They want real solutions. They don't want the Democrats' radical agenda.

I yield the floor.

The PRESIDING OFFICER (Mr. MARKEY). The Senator from Connecticut.

ORDER OF BUSINESS

Mr. MURPHY. Mr. President, I ask unanimous consent that the Senate vote on confirmation of the Bose nomination at a time to be determined by the majority leader in consultation with the Republican leader.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from West Virginia.

FILIBUSTER

Mrs. CAPITO. Mr. President, I rise today to deliver I think one of my more important speeches that I will give as a Member of this body, and that is to defend the longstanding rules of the U.S. Senate.

We are at a critical moment, make no mistake. With the slimmest of majorities, the Democrats haven't been able to pass their wildly unpopular agenda, so they are considering using the nuclear option—just think of the term “nuclear option” to show you how draconian it is—to eliminate the Senate's 60-vote threshold for legislation. They are doing it under the guise of protecting voting rights, but make no mistake—this power grab is not about voting rights. Instead, it is about advancing one party's agenda.

So I would like to take a look back at what Democrats, including President Biden, have said on the issue and why they are changing their tune. We can also debunk the argument that, if given the chance, Republicans would change the rules and eliminate the filibuster as the Democrats wish to do now.

Finally and most important to me, I am going to talk about how this short-sighted move would impact West Virginians, those whom I represent here in the Senate. They are the ones who will ultimately be hurt by this reckless and irresponsible change, and it is my responsibility to do what I can to stop it.

So President Biden is in Atlanta today, taking the bully pulpit to protest a State's law that he does not like as a reason to end the filibuster. He even says this is one of those defining moments. It really is. People are going to be judged as to where they were before and where they are after the vote.

It is interesting that he would say that because I would like to remind President Biden where he was when he was Senator Biden and what he had to say about eliminating the filibuster on this very floor in 2005.

He said:

It is not only a bad idea; it upsets the constitutional design, and it disserves the country.

Well, Senator Biden, I couldn't agree more. But he is not the only one who has done a complete 180 when it comes to the filibuster.

Majority Leader SCHUMER once said it would be “doomsday for democracy”—that sounds pretty bad, “doomsday for democracy”—if the filibuster were to be eliminated, and he was right. More recently, he has called the filibuster the most important distinction between the House and the Senate. Again, I couldn't agree more.

Then, from my home State of West Virginia, the late Senator Robert Byrd, a longtime Democrat, was unequivocal in his defense of preserving Senate rules.

He wrote in 2010:

The Senate has been the last fortress of minority rights and freedom of speech in this Republic for more than two centuries. I pray

that Senators will pause and reflect before ignoring that history and that tradition in favor of the political priority of the moment.

What would he say today?

Again, this is not about voting rights. It is important to note that we did have a record turnout in 2020. More people voted than ever before. More than 158 million ballots were cast in 2020, which is a 7-percent increase from 2016, and we didn't have this voting rights legislation. In West Virginia, we had thousands more people vote than voted in 2016. As a matter of fact, the total number of ballots that were cast in 2020 was more than in any election in our history with one exception—the 1960 election of President John F. Kennedy.

So don't believe the hyperbole. Don't believe the rhetoric. Don't take the bait. The party-wide flip-flop we are now seeing has nothing to do with voting rights. Instead, it has everything to do with paving the way for an aggressive and progressive agenda that the Democrats wish to enact.

One of the arguments from the other side that I hear all the time is, well, the Republicans would do the same thing and change the rules if given the chance. Guess what. We could have done that. Unfortunately, that argument doesn't carry much weight. Leader MCCONNELL, while sometimes under intense pressure to do this, never wavered, and we protected this institution. We didn't change the rules on the legislative filibuster when we didn't get our way. We could have, but we didn't.

Again, he knows, just as President Biden and Leader SCHUMER know, that if you can't get what you want, changing the rules is no way to govern. I certainly wouldn't run my household like that. It is no way to govern because it ultimately hurts those who sent us here to represent them.

In my home State of West Virginia, do you know what they want? They want us to work together like they saw us do on the bipartisan infrastructure bill. I hear this all the time. Bipartisanship is critical to making good and better policy, and if the Senate rules are changed, it would be a relic of the past. We just passed and signed into law the infrastructure bill that I worked to negotiate. We also passed the CARES Act. We passed opioid. We passed the Great American Outdoors Act—bipartisan.

We can do this, but if we change the rules to where only 50 votes are needed to pass legislation, there will be zero incentive or motivation for the two sides to work together. Just as bad, legislative accomplishments could be done or undone or redone and done over and over with just one flip of a Senate seat. Policies harmful to my State could be enacted: the Green New Deal, court packing, the federalizing of our elections. By the way, 54 of my 55 county clerks oppose that legislation. There would be packing the Senate with new States, defunding the police, attacking

the Second Amendment for law-abiding Americans, and more.

We don't even have to imagine what the Democrats would do or would want to do; we can just look at New York and what they just did. They are going to allow 800,000 noncitizens to vote. To put that in context, in my State of West Virginia, we only had 794,000 voters who voted for President in 2020.

Ramming radical policies through Congress without even attempting to gain consensus is not what our Founders envisioned, and it is not how Americans want us to operate.

Rest assured, those willing to change the rules to benefit themselves will do it again and again and again. Today, supposedly, it is voting rights. Tomorrow, it could be gun control. The next day, it could be open borders. I can only imagine.

I am asking my fellow Senators on the other side of the aisle: Don't do this. You will come to regret it, I think, if you do.

But I think that we need to preserve the rights of the minority.

We need to preserve the chance for bipartisanship. We need to preserve the traditions of the Senate. If you destroy this tradition, unfortunately, the country will suffer the consequences.

Thank you.

THE PRESIDING OFFICER. The Senator from Kansas.

MR. MARSHALL. Mr. President, I may be one of the Senate's newest Members, but that does not mean I don't understand the importance of the filibuster to this body or to this Nation as a whole.

Like Senators before me, I have observed the practice from the other side of the Capitol as a Member of the House and have heard the calls from a frustrated majority to eliminate it for the sake of jamming through an agenda and cashing in the political gain that would come from doing so.

But anyone who has an appreciation for our founding knows the purpose of the filibuster is indeed to frustrate the majority, to serve as an additional check in our government, and drive consensus and cooperation. Its purpose is to protect the rights of the minority and prevent the tyranny of the majority—in short, to save us from ourselves.

The Senators supporting the majority leader's effort to eliminate the 60-vote threshold seemed to once understand this too. Just a few years ago, 25 of them cosigned a letter opposing "any effort to curtail the existing rights and prerogatives of Senators to engage in full, robust, and extended debate."

Sadly, we are now witnessing the most blatant hypocritical policy switch we have ever seen, as many current Democrat Senators and the President have abandoned these principles.

This flip-flop appears to be all in the name of greed and power. They want to break the filibuster so they can break other institutions, such as the Su-

preme Court and State-run elections, to rig our political system in their favor because they can't win on their own radical socialist policies.

Without the filibuster, we will see tax laws, immigration rules, and more major policy go up and down like a roller coaster, negatively impacting our economy, creating uncertainty, and making it impossible for long-term business planning.

The filibuster is meant to force both parties to work together to come up with long-lasting policies which will help all Americans.

Take, for example, voting legislation. I want to make it easier to vote and harder to cheat—easier to vote, harder to cheat. With NANCY PELOSI's power grab act and other radical election proposals, the Democrats want to let the Federal Government take over our elections, which is unconstitutional, make it easier to commit fraud, pave the way for mass ballot harvesting, let felons vote, take integrity out of the elections process by prohibiting voter ID—something I am proud to say Kansas requires, voter identification, and it is working—and, finally, route taxpayer dollars toward funding political candidates they may not agree with.

I hope that Members of this body can come together, in a bipartisan way, to tackle the important issue of election integrity without destroying the 60-vote threshold in the Senate.

We have shown, in recent weeks, we can work together in a bipartisan fashion. The Senate voted 88 to 11 to pass the annual Defense authorization bill in December. The HELP Committee is currently working through a bipartisan bill to help tackle future pandemics. We can still tackle major issues in the Senate without abandoning our principles.

The right to extended debate for Members of this body has been preserved for two centuries, longer than the constitutional method of electing Senators via their home State legislature, which was ended when the 17th Amendment was ratified.

It is a dark day that Senators are being forced to come to the Senate floor to defend the 60-vote threshold. It would be one of the body's darkest days if 51 Senators changed the rules and removed our rights to robust debate and the right of our home States to have equal representation in this most distinguished legislative body. And it will come back to haunt them.

The answer to these partisan times is not to double down on partisanship and blow up the filibuster. I pray cooler and wiser heads will prevail, and we will maintain this important function of the Senate. Otherwise, our Nation is destined to become a winner-takes-all system, where the rights of the minority will never again be considered, and our Nation will suffer for it.

I yield the floor.

THE PRESIDING OFFICER. The Senator from North Carolina.

MR. TILLIS. Mr. President, I rise today to express my opposition to the

majority leader's plan to change the Senate rules. It will open the door wide for the filibuster to be eliminated for all legislation moving forward.

The bottom line is very simple: The ideologues in the Senate want to turn what the Founding Fathers called the "cooling saucer of democracy" into the rubberstamp of dictatorship. They want to because they can't get their way. They want to wash away 200 years of history. They want to turn this country into a banana republic, where if you can't get your way, you change the rules. It would be a doomsday for democracy.

These are strong words, and these are wise words, but they are not my words. They are direct quotes from Senator SCHUMER back in 2005, when he was a staunch opponent of weakening the filibuster. That is because during that time, the then-junior Senator from New York and his Democratic colleagues were making unprecedented use of the filibuster to derail President George W. Bush's judicial nominees.

The majority leader at one point profoundly admitted that "[y]es, we are blocking judges by filibuster. That is part of the hallowed process around here of the Founding Fathers saying the Senate is the cooling saucer."

But things have certainly changed two decades later.

President Biden, the majority leader, and their Democratic allies were intent on ending the filibuster the second the Democrats won the Senate last January.

The majority leader's latest attempt is to force a carve-out of the filibuster for what he claims will be just for one piece of legislation. But he knows where it leads: the full elimination of the filibuster and sooner rather than later.

I thought my friend the senior Senator from West Virginia put it perfectly last week. He said:

The problem with carve-outs is that you end up eating the whole bird.

There is no such thing as a carve-out when it comes to the filibuster. We all know it. I will talk a little bit about that later.

But for more than a century, the filibuster has served as a safeguard for our Republic. It has prevented one party from ramming through an ideological agenda when that party controls both the White House and Congress.

Without the filibuster, both the far left and the far right would have free rein to ram through extreme ideological agendas. Divisive partisan proposals could become law with only a simple majority. And with both parties regularly trading control of Congress, laws can just as easily be overturned and replaced, promoting the kind of chaotic, confusing policymaking we see in some European Parliaments.

By requiring 60 votes to end debate in the Senate, the filibuster promotes stability. It necessitates bipartisan compromise to pass legislation. That is something we need more of, not less.

I saw it firsthand when I was a proud participant in the passage of the bipartisan infrastructure bill. That is the way this Chamber needs to work.

That is why when President Trump demanded, I think some 30 times, that the Republicans should eliminate the filibuster in 2017, 61 Senators joined together in a letter making it clear that we would not let it happen. Thirty-two were Democrats, and 29 were Republicans. I was one of them.

And even though I received my fair share of pushback from my side of the aisle back in North Carolina, I was proud to sign that letter in 2017, and I would be proud to sign that letter today.

Unfortunately, this modest display of political courage has not been reciprocated by many of my friends on the other side of the aisle. Twenty-seven of the Senators who signed that letter are still in the Senate. Twenty-six of them are now supporting the full elimination of the filibuster. What changed? Nothing except the party in power.

Democrats staunchly defended and used the filibuster when Donald Trump was President at an unprecedented level, but Democrats are suddenly against the filibuster now that Joe Biden is President. Many of my Democratic colleagues are practicing situational principles: putting their own party's short-term interests ahead of what they know are the best long-term interests for the Senate and the Nation. It doesn't get more politically cynical than that.

President Biden served in the Senate for 36 years. He was known as a strong defender of the institution, including the filibuster. In this very Chamber, 21 years ago, Senator Biden declared that defending the filibuster was about defending "compromise and moderation." And he noted that his speech was one of the most important he would ever give. But now he favors destroying compromise, moderation, and the institution he had long cherished, all for the sake of political expediency for the next 12 months, until Republicans take back the House and most likely the Senate.

As I noted earlier, the majority leader also shares a partisan double standard with the President. In a "Dear Colleague" letter just earlier this month, he wrote that "Senate Democrats must urge the public in a variety of different ways to impress upon their Senators the importance of acting and reforming the Senate rules, if that becomes a prerequisite for action to save our democracy."

The Senate rule change he refers to is carving out the filibuster in order to pass one of the far left's priorities; that is, the voting bill that many of my Members or colleagues have talked about today.

But in 2018, the then-Senate minority leader struck a different tone. He said:

The legislative filibuster . . . is the most important distinction between the Senate and the House. Without the 60-vote threshold

for legislation, the Senate becomes a majoritarian institution like the House . . . no Senator would like to see that happen.

What is the difference between today and only a few short years ago? Again, it is the party that is in power.

This same pattern of situational principles also applies to the majority whip. He went on national television when Donald Trump was President to warn that eliminating the filibuster "would be the end of the Senate as it was originally devised."

That is Senator DURBIN.

But less than 4 years later, after Democrats won control of the White House and the Senate, the majority whip has a much different take. He recently declared that "the filibuster is making a mockery of the American democracy." He made that statement after he and his fellow Democrats used the filibuster a recordbreaking 328 times between 2019 and 2020, when President Trump was in office. That level hypocrisy is audacious, even by Washington, DC, standards.

And I know Democrats have been pushing back on this claim, claiming they are not trying to end the filibuster. They assure us that this is a one-time deal that will only apply to this one bill.

I would refer them to Newton's third law of physics: "For every action, there is an equal and opposite action." It most definitely applies to Senate rules as well.

In 2013, Senate Democrats invoked the nuclear option to end the 60-vote cloture requirement on judicial and Executive nominees other than the Supreme Court. All Republicans, and even a handful of Democrats, including the senior Senator from West Virginia, pleaded with the Democrats not to do it.

Minority Leader MCCONNELL warned Democrats at the time that "you'll regret this, and you might regret it even sooner than you think." But they did it anyway. And, indeed, there was that reaction.

Four years later, Republicans controlled the Senate, and we used the nuclear option to finish what our Democratic colleagues started on the executive calendar. We ended the 60-vote requirement for Supreme Court nominees.

There is a clear precedent on what happens when we change the Senate rules on a partisan basis for political expediency. It produces long-term consequences that I believe both sides will ultimately regret.

Democrats invoked the nuclear option to get more district judges, but by doing so, they paved the path for Justice Gorsuch, Justice Kavanaugh, and Justice Barrett, who now sit on the Supreme Court today.

What do we think now if the Democrats nuke the filibuster for just one bill? The Senate rule change that the majority leader is pushing is really a proxy vote for ending the legislative filibuster altogether and turning the Senate into the House, full stop.

So I ask my Democratic colleagues to consider this: When President Trump called for ending the filibuster, a large majority of Republican Senators stood up to preserve bipartisanship and to protect and respect this institution. Now, the roles are reversed. President Biden and the majority leader are demanding that you give them your vote to weaken the filibuster so it can ultimately be ended.

To my Democratic colleagues who signed on to the very same letter I did in difficult circumstances, I ask you: Will you stand up for the principles that you stood for just a few years ago and respect and defend this institution?

The PRESIDING OFFICER. The Senator from Utah.

Mr. ROMNEY. Mr. President, I prepared some remarks to give this evening, but I had the occasion to watch President Biden as he spoke in Georgia just a few minutes ago, and he said quite a number of things that simply weren't true. He also accused a number of my good and principled colleagues in the Senate of having sinister, even racist inclinations. He charged that voting against his bill allies us with Bull Connor, George Wallace, and Jefferson Davis—so much for unifying the country and working across the aisle.

More troubling, however, he said that the goal of some Republicans is to "turn the will of the voters into a mere suggestion." And so President Biden goes down the same tragic road taken by President Trump: casting doubt on the reliability of American elections.

This is a sad, sad day. I expected more of President Biden, who came into office with a stated goal of bringing the country together.

Now, our country has defied the odds for a democratic republic. It has survived and thrived for over 200 years. The character of the American people deserves most of the credit for that, but close behind are our vital institutions. Over the last several years, many of us recoiled as foundational American institutions have been repeatedly demeaned: The judiciary was charged with racial bias. The press was called the enemy of the people. Justice and intelligence agencies were belittled. Public health agencies were dismissed. Even our election system was accused of being rigged.

The U.S. Senate is one of our vital democratic institutions, and the power given to the minority in the Senate and the resulting requirement for political consensus are among the Senate's defining features. Note that in the Federal Government empowerment of the minority is established through only one institution: the Senate.

The majority decides in the House. The majority decides in the Supreme Court. The President, of course, is a majority of one. Only in the Senate does the minority restrain the power of the majority. That a minority should be afforded such political power is a critical element of this institution.

For a law to pass in the Senate, it must appeal to Senators in both parties. This virtually assures that the bill did not originate from the extreme wing of either one and, thus, best represents the interests of the broadest swath of Americans. The Senate's minority empowerment has meant that America's policies inevitably tack towards the center. As Senator Biden previously affirmed: "At its core, the filibuster is not about stopping a nominee or a bill, it is about compromise and moderation."

Consider how different the Senate would be without the filibuster. Whenever one party replaced the other as majority, tax and spending priorities would change, safety net programs would change, national security policy could change, cultural issues would career from one extreme to the other—creating uncertainty and unpredictability for families, for employers, and for our friends abroad.

The need to marshal 60 votes requires compromise and middle ground. It empowers the minority. And it has helped to keep us centered as a nation, fostering the stability and predictability that are essential for investments in people, in capital, and in the future. Abandoning the principle of minority empowerment would fundamentally change a distinct and essential role of the U.S. Senate.

But today's Democrats, now with the barest of majorities in a 50-50 Senate, conveniently ignore their own impassioned defense of the filibuster when they were in the minority. Let us be clear that those who claim the filibuster is racist know better.

For President Obama to make this absurd charge after he, himself, made a vigorous and extensive defense of the filibuster just a few years ago is both jarring and deeply disappointing. After all, I don't recall a single claim from Democrats that employing the filibuster hundreds of times over the last several years when they were in the minority was in any way racist.

Over the course of my life, I have found that when presented with a matter of personal advantage that would require abandoning principles, the human mind goes to work overtime to rationalize taking that advantage.

Only a few months ago, some of my Senate Democratic colleagues rationalized that the Senate couldn't function and, therefore, they had to get rid of the 60-vote rule. But then the Senate functioned quite well when it passed the infrastructure bill, armed services legislation, and a bill on innovation.

So, a few months later, some of these colleagues argued that in order to raise the debt ceiling, the 60-vote rule has to go. Then, with bipartisan cooperation, the Senate raised the debt ceiling.

So now, the Democrats' latest rationalization is that their partisan new election law must be passed. But Democrats have filed these voting bills numerous times over numerous years, always without seeking Republican in-

volvement in drafting them. Anytime legislation is crafted and sponsored exclusively by one party, it is obviously an unserious, partisan effort.

Let me note two more truths. The country is sharply divided right now. Despite the truth spoken by a number of good people in my party, most Republicans believe Donald Trump's lie that the 2020 election was fraudulent, stolen by Democrats. That is almost half the country.

Can you imagine the anger that would be ignited if they see Democrats alone rewrite, with no Republican involvement whatsoever, the voting laws of the country? If you want to see division and anger, the Democrats are heading down the right road.

There is also a reasonable chance Republicans will win both Houses in Congress and that Donald Trump himself could once again be elected President in 2024. Have Democrats thought what it would mean for them for the Democrat minority to have no power whatsoever?

And finally, Mr. President, I offer this thought: How absurd is it to claim that, to save democracy, a party that represents barely half the country must trample on the rules of our democracy's senior institution?

The PRESIDING OFFICER. The Senator from Rhode Island.

U.S. SUPREME COURT

Mr. WHITEHOUSE. Mr. President, with my distinguished colleague from Utah here, I would just—before I get to my remarks—suggest that there may be an exception to his rule that when a piece of legislation is only sponsored by Members of one party it can't be serious legislation; and, in my view, that would include climate legislation, where it has been extremely hard to get Republicans to cosponsor any serious climate bill. And I think that has nothing to do with the seriousness of the legislation and everything to do with the influence of the fossil fuel industry.

But that said, Mr. President, I am here to speak for the 11th time in my series discussing the scheme through which a bunch of big, anonymous donors captured our Supreme Court.

Today, I am going to talk about the Biden Supreme Court commission, which could have done a useful, even authoritative investigation of the scheme and all its terrible effects at the Court but which, regrettably, ended up as an exercise in ineffectual time-killing.

I have laid out the scheme in detail in earlier speeches in this series. In a nutshell, there is a very well-studied phenomenon of regulatory capture, sometimes called agency capture, through which big industries try to capture and control the regulatory agencies that are supposed to be policing them.

Well, in the same way, big, rightwing donor interests set out to capture the Supreme Court. And they did it. It worked. Now, the Court's 6-to-3, big-

donor-chosen supermajority is delivering massive wins for those donor interests, and the American people can smell what Justice Sotomayor aptly characterized as the "stench" of a captured Court.

The problems of the Court are real, and they demand action. Enter the Court commission. Charged with thinking through solutions to the Court's many problems, the commission was perfectly positioned to report on the scheme and offer a blueprint for restoring the Court. But its final findings, released last month, offered instead what I have called faculty-lounge pabulum.

Sure, yes, they gestured toward the need for a code of ethics for the Justices, which makes sense because Supreme Court Justices have the lowest ethics standard of any top Federal official. But pointing that out is a little bit like pointing out a flat tire on a totaled car.

Consider the facts the commission ignored: A private, partisan, anonymously funded organization—the Federalist Society—handpicked the last three Supreme Court Justices. President Trump and his White House counsel admitted they had "in-sourced"—their word—the Federalist Society to the White House to choose their nominees.

Senator Hatch, our former colleague, former chairman of the Judiciary, was asked if this role was outsourced to the Federalist Society, and he said, "Damn right."

No other democracy in the world has had such a ridiculous system for selecting Judges. That is bad. It gets worse. Anonymous donations helped rightwing front groups mount a \$400 million push to capture and control the Court with zero transparency into who gave the money or—more importantly—what matters they had before the Court whose Justices they were installing. That is disgraceful. And trust me, nobody spends \$400 million without a motive.

There is more. Orchestrated flotillas of amici curiae, so-called friends of the court, funded by dark money, instruct the Court which way to rule, and they score virtually perfect success with the Republican appointees whom dark money ushered onto the Court.

The Court has even allowed peculiar fast lanes for dark money groups to speed cases to the Court for Justices to decide favored, politically helpful cases. In some cases, the Justices even invited the case to be rushed to the Court.

And this mess culminates in a notable, troubling statistical record. The Roberts Court delivered more than 80—80—partisan 5-to-4 decisions benefiting big Republican donor interests. The record in that category of decisions was 80 to 0, and that is before the Court's new 6-3, donor-chosen supermajority.

That is a lot for the Commission to leave out. The Commissioners can't claim they did not have fair notice.